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January 15, 2003

VIA FACSIMILE 916-322-6440

Chairman Getman and Commissioners Downey, Knox and Swanson  
Fair Political Practices Commission  
428 J Street  
Sacramento, CA 95814

RE: **Comment on January 17, 2003 Agenda Item #3,  
Emergency Regulation 18530.2**

Dear Chairman Getman and Commissioners:

We are writing on behalf of our client, Assemblymember Joe Simitian, and his controlled committee, Simitian for State Assembly, ID# 990445, a committee formed for his 2000 election to the state Assembly, regarding the proposed emergency regulation 18530.2 and its treatment of pre-2001 funds and the transfer of those funds without attribution.

We wrote in December, objecting to the proposed language in the Proposition 34 Fact Sheet, which stated that: "The amount that may be transferred without attribution must be reduced by amounts spent by the committee since January 1, 2001." Kirk Pessner, of my office, appeared before the Commission and the Commission agreed to remove the question and answer in the Fact Sheet and to bring an emergency regulation to the January Commission meeting.

The staff proposal before the Commission provides three options (A, B and C) for the Commission's deliberations. We believe that the staff has unnecessarily intertwined two issues: the number of transfers that can be made is a separate issue from whether the amount transferred must be reduced by the expenditures made from the committee on or after January 1, 2001.

## **SUBTRACTING EXPENDITURES FROM FUNDS POSSESSED ON JANUARY 1, 2001 IS NEW ADVICE**

The advice of the Legal Department to Diane Fishburn, in Advice Letter A-02-271, written on October 25, 2002, was the first time Commission staff has stated that 85306(c) funds possessed on November 6, 2002 by a statewide candidate are reduced by post November 6, 2002 expenditures. The Commission staff, in its proposed Proposition 34 Fact Sheet extrapolated the Fishburn advice to Assembly and Senate candidates, even though Assembly and Senate candidates were subject to 85036(b) as of January 1, 2001. While Ms. Fishburn's client was not yet subject to 85306(c) at the time of the writing of the advice letter, almost two years had gone by for Assembly and Senate candidates. In those years, these candidates were operating under different law than you now propose.

Assemblymember Simitian advises us that he personally spoke to Trish Mayer of the Technical Assistance & Analysis Division. She advised him that a pre-2001 committee could add funds to the account and spend from those newly-raised funds, without jeopardizing the ability to transfer without attribution, funds possessed on January 1, 2001. Assemblymember Simitian advised us that Ms. Mayer discussed the matter with the rest of the staff before advising him.

## **THE COMMISSION HAS SET GUIDELINES BEFORE**

Since the effective date of Proposition 34, the Commission has adopted three regulations that relate to the conduct of pre-Prop 34 committees: Regulation 18536, adopted in July 2001, Regulation 18531.6, adopted in October 2001 and Regulation 18404.1 adopted in February 2002. These regulations do not suggest that "funds possessed" as of January 1, 2001 is the net of cash on hand December 31, 2000 minus expenditures subsequently made.

Regulation 18536, which directly relates to transfers and attribution, does not even suggest that the plain meaning of Government Code 85306 (b) and (c) would be subject to a reduction of expenditures.

Regulation 18404.1 provided that pre-2001 committee had no contribution limits and could continue to raise funds in unlimited amounts. No mention was made at that time that the "funds possessed" provisions of Government Code 85306 (b) and (c) would be reduced by expenditures made.

## **GOOD FAITH ATTEMPT TO COMPLY**

Assemblymember Simitian and his committee have made a good faith effort to comply with the law in order to be able to apply Government Code Section 85306(b) to his pre-2001 campaign committee and its funds possessed

as of January 1, 2001. We did not seek written advice from the Commission based on the plain meaning of the statute, the telephone advice from staff, and the adoption of Regulations 18404.1 and 18536, which relate to pre-Prop 34 funds and their treatment, but did not suggest that funds possessed on January 1, 2002 would be reduced if not spent.

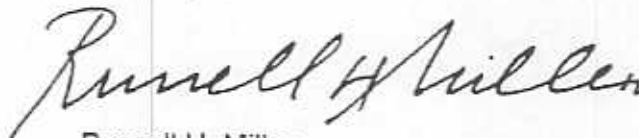
#### SUGGESTED AMENDMENT TO REGULATION 18530.2

We would recommend that Section (a)(2) of the proposed regulation be revised as follows:

*Only funds held by a committee on January 1, 2001 may be transferred without attribution. In order to be able to transfer all funds held January 1, 2001 without attribution, the committee must demonstrate that its cash on hand balances at any point subsequent to January 1, 2001 were not below those on January 1, 2001. To the extent the cash on hand balance did fall below the January 1, 2001 figure, the amount difference between the cash on hand balance January 1, 2001 and the lowest subsequent cash on hand at the time of the transfer would be subject to Government Code 85306(a), rather than Government Code Section 85306(b) or (c).*

Thank you for your consideration. I intend to be present at the Commission meeting on the 17<sup>th</sup>.

Sincerely,

A handwritten signature in cursive script that reads "Russell H. Miller".

Russell H. Miller  
Attorney at Law